

ADM 2002-34

>>> "Marty Tieber" <[marty@fmtieberlaw.com](mailto:marty@fmtieberlaw.com)> 07/25/03 04:50PM >>>

Dear Clerk,

I have been handling criminal appellate matters exclusively since I began working with the State Appellate Defender Office in 1973. In November of 2002 I retired from that office and began a private law practice. I am a solo practitioner without employees and to date have handled only appellate and post-conviction criminal defense work. I am on the MAACS roster at level III for several counties.

From 1978 until my retirement from SADO I concentrated on complex appellate and post-conviction (state and federal) litigation. My current caseload continues that practice. I tend to do the "box" cases. Transcripts are measured in feet, not pages. Police reports, which can be obtuse, are voluminous. Often I find little help in what was done below by counsel on both sides and organization of the material and record investigation takes a substantial amount of time before I can even begin to absorb (reading and note taking) a long record. I always visit my clients, most of the time more than once. And, importantly, I think that oral argument is critical and essential.

The first thing I will be forced to do if the proposed rules regarding time within which to file Appellant's Brief on Appeal are approved will be to remove myself from the MAACS roster. I will have to limit my appellate caseload to a few cases a year and even without high overhead I would not be able to manage my practice on the extremely low fees provided in appointed cases if I can handle only a few appeals a year. The reason I will have to do this is simple. I will not forego oral argument and I will not file slipshod, hastily written briefs put together without a thorough review of the record below and without comprehensive legal research. That is what this Court is asking for with such draconian cuts in time allowed for filing Appellant's brief.

I realize that one response might be that if I am truly handling "box" cases I can request an extension. I have been practicing for three decades and I have experienced wide variance over the years in the court's willingness to grant extensions. I have been denied where my rationale appeared, to me at least, to brook no logical opposing argument. The proposed rule would cut in half the "guaranteed time" (from 84 to 42 days - I consider the 28 day stip period guaranteed as I always discuss that with my opposition ahead of time and have never been

turned down in a complex, lengthy trial appeal). And I will not put oral argument in jeopardy by counting on time that is not guaranteed.

Since I have no secretary and employ no other lawyers, I have little wiggle room with a reasonably sized caseload if you cut my guaranteed brief filing time in half. As I indicated my only possible course of action would be to resign from the MAACS roster and handle very few appellate matters each year. I realize that those making the decision on this proposed rule change may not consider this result adverse (wasn't I supposed to be retiring after all!). But please consider the other lawyers in my position who would be placed in a similar bind. Thanks so much for your consideration.

---F. Martin Tieber

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